

GARDNER C. McFARLAND

IBLA 71-219

Decided October 13, 1972

Appeal from decision (R-271-2) of Riverside, California, district and land office, Bureau of Land Management, declaring lode mining claims null and void ab initio.

Affirmed as modified and remanded.

Mining Claims: Lands Subject to--Withdrawals and Reservations: Effect of

While land is withdrawn from mineral location no rights to the land may be gained under mining claims located during the withdrawal period.

Mining Claims: Lands Subject to--Mining Claims: Power Site Lands--Mining Claims Rights Restoration Act--Withdrawals and Reservations: Power Sites

Where lands within power site withdrawals were restored to mineral location by the Mining Claims Rights Restoration Act, they will subsequently be closed to such location when and so long as such lands are within a preliminary permit issued by the Federal Power Commission or an application for a license for a project filed by the permittee while the permit is in effect.

Mining Claims: Power Site Lands--Mining Claims Rights Restoration Act--Withdrawals and Reservations: Power Sites

The Mining Claims Rights Restoration Act did not retroactively validate mining claims located prior to the Act while the land was within a power site withdrawal.

Mining Claims: Determination of Validity--Mining Claims: Hearings--Mining Claims: Power Site Lands--Mining Claims Rights Restoration Act--Rules of Practice: Hearings--Withdrawals and Reservations: Power Sites

The Bureau of Land Management, without holding an evidentiary hearing, may properly declare that mining claims were null and

void ab initio when they were located while land was within a power site withdrawal and no rights therein could be based upon the original locations. However, such a finding does not determine the validity of claims located after the lands were opened to mineral location by the Mining Claims Rights Restoration Act or held thereafter for the period prescribed by 30 U.S.C. § 38 (1970).

APPEARANCES: Gardner C. McFarland, pro se.

OPINION BY MRS. THOMPSON

Gardner C. McFarland has appealed from a decision of the Riverside, California, district and land office, Bureau of Land Management, dated January 29, 1971, which declared his lode mining claims null and void ab initio.

The mining claims in question were shown by the record to have been located and recorded as follows:

Claim Name	Location Date	Recordation in Ventura County Records
Morning Star No. 1	10/29/34	Bk 435; pp. 246-247
Morning Star No. 2	10/29/34	Bk 436; pp. 132-133
Prosperity No. 1	3/6/42	Bk 655; p. 356

The decision indicated that although the recorded location notices did not precisely describe the lands within the claims, it appears they are within the Los Padres National Forest in unsurveyed sections 30 and 31, T. 7 N., R. 18 W., S.B.M., specifically, in what will probably be when surveyed, the NE 1/4 section 31 and possibly the SE 1/4 section 30. It also indicated that the SE 1/4 section 30 and the NE 1/4 section 31, among others, were withdrawn from entry or mineral location when the claims were located. The withdrawal was made in accordance with section 24 of the Federal Power Act, 16 U.S.C. § 818 (1970).

The decision also found that although the Mining Claims Rights Restoration Act of August 11, 1955, 30 U.S.C. § 621 (1970), restored certain lands in power site withdrawals to location, it did not validate locations on claims prior to the effective date of the Act, i.e., August 11, 1955.

Appellant alleges that taxes have been paid regularly to Ventura County on the three claims, that they have been occupied in good faith

since location, and that the Riverside, California, district and land office of the Bureau "has record that required claim work on all three claims was performed annually."

Appellant also appears to confuse the statement in section 24 of the Federal Power Act, regarding notice of application for a power project to be filed in the land office, with other notices filed by the claimant, or his predecessors, in 1961, 1962, and 1963. It is not entirely clear what notices appellant is referring to, but it appears likely that he is referring to verified statements filed pursuant to a proceeding under section 5 of the Surface Resources Act of July 23, 1955, as amended, 30 U.S.C. § 613 (1970). A copy of serial register page L.A. 0169823-K shows that verified statements filed for these claims were rejected in 1962, and also that a withdrawal of a verified statement was filed in 1963. When verified statements are rejected or withdrawn in a section 5 proceeding under the Surface Resources Act, the surface resources in mining claims affected by the proceedings are under the management and control of the United States insofar as they do not conflict with mining uses. A proceeding under the Surface Resources Act, however, does not establish the validity or invalidity of a mining claim, but is limited to the purposes prescribed by Congress. Arthur L. Rankin, 73 I.D. 305 (1966).

The record establishes that the lands have been withdrawn for power purposes since July 5, 1921, and have never been restored from withdrawal by direction of the Federal Power Commission. Thus, under section 24 of the Federal Power Act the lands remain within the power withdrawal. Because the claims were located when the lands were withdrawn, the claims were null and void ab initio and no rights could be gained under the mining claims so long as the land was withdrawn. T. L. and George F. Bruckner, A-31105 (March 25, 1970); Armin Speckert, A-30854 (January 10, 1968); John H. Lawrence et al., A-30321 (February 3, 1965).

We turn now to the Mining Claims Rights Restoration Act which opened to mineral location and patent lands within power withdrawals with a reservation to the United States of power rights in the lands. Excepted from this opening are lands included in any project operating or being constructed under a license or permit from the United States, and lands under examination and survey by a prospective licensee of the Federal Power Commission pursuant to a preliminary permit issued under the Federal Power Act. 30 U.S.C. § 621(a).

Information obtained by this Board from the Federal Power Commission reveals that since the enactment of the Mining Claims Rights

Restoration Act the lands within these claims have not been included in any licensed power project from the United States or within a preliminary permit with one exception. The W 1/2 NE 1/4, E 1/2 NW 1/4, NE 1/4 SW 1/4, and SE 1/4 of sec. 30, and the NE 1/4 NE 1/4 of sec. 31 were within a preliminary permit issued to the State of California by the Federal Power Commission effective July 1, 1964. The State filed an application with the Commission on December 15, 1965, to license the project. The Commission reports, however, that the lands described above were not included in an amended application for license filed by the State on September 22, 1967.

From these facts, it is deduced that the lands were restored to mineral entry as of the effective date of the Mining Claims Rights Restoration Act. When, however, the lands described in the preceding paragraph were included within the preliminary permit issued to the State of California and included in its application for a license, they were again excepted from the restoration and closed to mineral location so long as such lands were within the preliminary permit or application for a license for a power project filed by the permittee while the permit was in effect. Foster Mining and Engineering Company, 7 IBLA 299, 79 I.D. ____ (1972); A. L. Snyder, et al., 75 I.D. 33, 36 (1968).

It is well established that the Mining Claims Rights Restoration Act did not retroactively validate claims located prior to the Act while the land was in a power withdrawal so as to make claims effective as of the time of their original location. Day Mines, Inc., 65 I.D. 145 (1958); Howard W. Balsley, A-27920 (June 15, 1959). We agree with the Bureau's decision to this extent, and to the extent that it held that the claims were void ab initio when they were located.

Unless the lands within the claims were withdrawn from mineral location for purposes other than power purposes, and with the exception indicated above, they were open to mineral location after the enactment of the Mining Claims Rights Restoration Act, subject to a reservation of power rights to the United States, and subject to certain conditions prescribed by the Act.

Appellant has asserted the performance of assessment work on the claims and notice thereof to the land office since the date of the Mining Claims Rights Restoration Act. From the present record it is impossible to determine whether actions by the mining claimants with respect to these claims since that Act have established any rights in the claims. Sections 2 and 3 of the Act (30 U.S.C. § 621(b) and 623 (1970)) prescribed certain conditions regarding

mining locations on lands open to entry under the Act. ^{1/} We held in Meritt N. Barton, 6 IBLA 293, 79 I.D. ____ (1972), that where land withdrawn from mineral location is restored to entry under the mining laws, and in the absence of any intervening rights, fulfillment of the conditions provided in 30 U.S.C. § 38 (1970) may serve as a substitute to making a new location if the lands are held for the requisite number of years thereafter and a discovery of a valuable mineral deposit is then shown.

It was proper for the Bureau to declare without holding an evidentiary hearing that these mining claims were null and void ab initio when they were located and no rights therein could be based upon the original locations. Cf., The Dredge Corp., 65 I.D. 336, 341 (1958), aff'd., Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1968). However, the decision is modified to clarify that no determination is made of the validity of the claims under any new location, made either by the requisite acts of filing and posting, etc., or a substitute for a new location by any holding pursuant to 30 U.S.C. § 38, while the lands were open for mineral location under the Mining Claims Rights Restoration Act.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as modified herein and the case is remanded to the Bureau for whatever action it may deem appropriate in light of this decision.

Joan B. Thompson, Member

We concur:

Martin Ritvo, Member

Anne Poindexter Lewis, Member

^{1/} However, failure of a claimant to furnish the land office with a notice of his location as prescribed by section 3 of the Act, has been held an insufficient reason for forfeiting a mining claim located on power site lands. MacDonald v. Best, 186 F. Supp 217 (D.C. Cal. 1960); followed B. E. Burnaugh, 67 I.D. 366 (1960).

